

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1855 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

NARCHANIA DHIRAJLAL BECHARLAL DECD. BY HIS HEIRS & LR.

Versus

LR. AND HEIRS OF DECD RANA CHANDRASINH MANSINH

Appearance:

Mr.K.G.Vakharia for Petitioners

Mr.P.S.Champaneri for Respd.Nos.1 & 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/09/98

ORAL JUDGEMENT

1. List has been revised thrice. None appears for the parties. The record has been examined suo-motu. This old revision cannot be allowed to stand on the file of this Court simply because none from the side of the parties is to take care of this old revision.

2. This Civil Revision Application arise under peculiar facts and circumstances and has a chequered history. Civil Suit No.22 of 1957 was decreed. It was said to be a Suit for mandatory injunction. The decree was put to execution. Application was moved by the decree holder under Order : 21, Rule : 32(5) C.P.C. alleging that the judgment debtors have failed to demolish the structures raised and committed breach of injunction order and the decree passed by the trial Court. The decree holder prayed that in view of the report of the Commissioner suitable action by keeping the respondent in civil prison be taken.

3. The executing Court vide its order dated 25.1.1980 found from the copy of decree Ex.2 that the allegation of the decree holder stood repudiated and there was no injunction whereby the respondents were restrained from committing acts complained of. The report of the Commissioner on the execution side was also considered by the executing Court and it observed that the Commissioner's report also did not support the allegations made by the decree holder. The executing Court further found that none of the respondents were parties to the Suit in which the decree was passed. Accordingly the executing Court dismissed the application of the decree holder debtor for execution of the decree.

4. It was manifestly an order relating to execution of the decree which was passed on 25.1.1980. At that time amendment to the Code of Civil Procedure was already made and such orders were excluded from the definition of decree. Consequently only revision could be filed against the order of the executing Court passed on 25.1.1980. Ignoring this mandate incorporated by the amending Act the decree holder preferred to file Regular Civil Appeal No.31 of 1980 which was dismissed on 29.7.1981 being not maintainable. Against this order of the Appellate Court the decree holder preferred writ petition styled as Special Civil Application No.3678 of 1982. Subsequently this Special Civil Application was

converted into Civil Revision Application No.1855 of 1982. Still no consequential amendment in the relief sought in the original writ petition was made. It seems that conversion of Special Civil Application into Civil Revision Application is a hollow formality according to the revisionist. Without seeking consequential amendment to the relief clause the revision is liable to be thrown out. The relief clause as it stands is for issuing a writ of mandamus directing execution Application No.40 of 1978 and directing the respondents to demolish construction of latrine, etc. Such direction can hardly be given in exercise of jurisdiction under Section 115 C.P.C.

5. Coming to the merits of the revision the executing Court for cogent reasons has observed that there is no decree for injunction and that the respondents were not parties to the suit in which the said decree was passed. The executing Court was, therefore, justified in rejecting the application against the respondents as not maintainable.

There is no substance in this revision which is hereby dismissed. No order as to costs.

sd/-

(D. C. Srivastava, J.)

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